

RE: [EXTERNAL] Re: Lyons v. Clements -- Rule 408 Settlement Discussions

From: Jared S. Dahle <jsdahle@GARLINGTON.COM>

To: 'Larry Henke' <larry@vicevichlaw.com>

CC: 'ryan@vicevichlaw.com' <ryan@vicevichlaw.com>

Date: Monday, October 18th, 2021 at 10:20 AM

No objection from Deputy Clement's standpoint. I intend to seek dismissal of Deputy Clement through 2-9-305 and will be presenting you with the brief shortly. Thanks.



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From: Larry Henke

Sent: Monday, October 18, 2021 9:59 AM

Cc: Jared S. Dahle; 'ryan@vicevichlaw.com'

Subject: [EXTERNAL] Re: Lyons v. Clements -- Rule 408 Settlement Discussions

This Message originated outside your organization.

Jared, do you have any objection to my motion to amend the complaint to add Butte Silver Bow and Jefferson counties as defendants?

Lawrence E. Henke

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----- Original Message -----

On Wednesday, October 13th, 2021 at 10:44 AM, Larry Henke <larry@vicevichlaw.com> wrote:

Gentlemen,

I've now heard from Jefferson County Sheriff's Deputy Duston Clements in discovery and Butte Silver Bow via Josh Stearns deposition. The position as I understand it is essentially this:

Stearns: He claims to have sent the warrant information to Jefferson County June 3 at 10:45 AM as a discretionary task, not an official duty or procedure followed in all cases

BSB: Via Eileen Joyce, Justice Court quashed the warrant June 3 at 2:59 PM; BSB allegedly pulled the warrant from the system at 4:58 PM on June 3; Stearns did nothing to correct his e-mail of 4 hours earlier

Clements: He claims to have requested verification of the warrant at 8:20 PM pm on June 3

Jefferson County: Claims that Butte-Silver Bow verified the warrant at 8:20 PM on June 3.

Stearns: Upon learning on June 8 that Jefferson County served the warrant said: "You what!"

Frankly, these assertions of (i) BSB pulling the warrant and (ii) Jefferson County verifying the warrant cannot co-exist in the same realm of truthful facts. Plus, Stearns starting this avalanche by rolling a rock over the edge and not ever doing anything later – when the warrant was known to be recalled, during normal business hours – is the precise action that takes government employees out of qualified immunity.

Right now, I'm quite comfortable with the civil rights claims and the facts clearly support it. And, I'm perfectly content with finding areas of criticism within each agency's policies, procedures, and conduct in discovery and depositions, and then leaving it to a jury how much of the weight is borne by either/both agencies.

These types of cases tend to have a predictable pattern and for whatever reason there is traditional resistance to resolving them early. I'm not hopeful that this case will deviate from that past pattern, but in an effort to try to resolve this early before fees become the over arching issue (which are recoverable under the claims pleaded and to be pleaded) I would like to follow up on our June 7, 2021 claim notice before filing suit.

If you want to avoid the counties being added to the pending suit, and to resolve the pending suit against Clements, then I suggest you provide an offer of resolution.

Each county has denied liability, and my tender period has run its statutory course. I will leave this offer open for you to informally resolve the matter until **Friday, October 15, 2021**, at 1 PM; then I will file suit.

Let me know.

Larry

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